



European Shisha Community Alliance
(ESCA)

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Directorate-General for Taxation and
Customs Union
Directorate C — Indirect Taxation and Tax
Administration
Unit C-2 Indirect taxes other than VAT
European Commission
B-1049 Brussels

5th of January 2021

Dear Sir/Madam,

Subject - Feedback on Inception Impact Assessment – Ares (2020)7441440

I am writing to you on behalf of *The European Shisha Community Alliance* (ESCA). We aim to represent the thousands of manufacturers, distributors, retailers and lounges that are involved in the sale of shisha - also called water-pipe, cachimba, nargile and mu'aseel - in Europe.

We are writing to convey our perspective for inclusion in the *Inception Impact Assessment with respect to the Revision of Directive 2011/64/EU on the structure and rates of excise duty applied to manufactured tobacco*.

It is important to note that shisha is a unique product and is fundamentally different from other tobacco products. Shisha is a centuries old social tradition and it contains the lowest amount of tobacco of any tobacco product¹. The vast majority of shisha users enjoy it monthly or weekly². It is predominantly served and shared in shisha lounges and requires cumbersome equipment and expertise to prepare. One shisha session takes up to 20 minutes to prepare and between 45

¹ On average shisha products in the EU contains between 15% and 20% tobacco leaf with the remainder consisting of glycerine, fructose and flavourings.

² In the United States a CDC study shows that on average 89% of users do so less than once per month, in Germany the Federal Institute of Risk estimates that on average shisha is used 2 to 3 times per week.

minutes and an hour to consume. It is heated at a much lower temperature than cigarettes and therefore does not produce tobacco smoke but rather a vapor that contains fewer and lower concentrations of constituents normally found in cigarette smoke, including nicotine³⁴⁵. In short, it is a very different product from other tobacco and nicotine products characterised by social and occasional (infrequent) use. Of course, it is not without risk but crucially, it is not typically consumed daily and compulsively like cigarettes and e-cigarettes. We believe that this is because it is low in tobacco and nicotine and is cumbersome and time consuming to set up and consume. It requires skill, expertise and patience. These features also limit its appeal and practicality for minors as it cannot be concealed (from parents or in schools for example) or carried around easily. That being said, ESCA firmly believes that shisha is a social product for adults only and should not be accessible to minors.

Currently, the level of contraband or counterfeit shisha products has reached over 90%⁶ in some EU Member States resulting in a significant loss of potential tax revenue. Furthermore, sales of shisha have been driven 'under-the-table' and away from licenced or reputable retailers that abide by existing laws that prevent minors from purchasing tobacco products. This feature of the market threatens the sustainability of the legal shisha sector (i.e. legally operated manufacturers, distributors, retailers and lounges) which ESCA was formed to represent. The underlying conditions that are leading to the loss of tax revenue and regulatory control within the shisha sector includes:

1. **A significant range in the excise tax rates for shisha tobacco between EU Member States.** This ranges from 22 euro per kg to 159 euro per kg⁷ creating an attractive incentive for criminal groups.
2. **The manufacturing of low-quality illegal shisha tobacco is not uncommon** as it does not require complex packaging, printed material or manufacturing machinery⁸.
3. The shisha category is very small relative to the overall tobacco sector and therefore attracts a lower level of enforcement attention. As a consequence, the opportunities for counterfeiting and/ or smuggling shisha products has attracted the interest of organised criminal groups. Such groups are further able to take advantage of **open borders across the EU to easily transport product** from Member States where taxes are low to Member States where taxes are high⁹.
4. **'Bulk' tobacco is widely available for sale** in Southern Europe and the Balkans¹⁰. This tobacco is easily mixed with flavours to create a counterfeit version of shisha tobacco of very poor standard and quality.
5. Poor quality counterfeit tobacco is widely available in the EU and is **transported, stored and sold in unmarked plastic containers**¹¹.

³ Shihadeh, A (21 July 2002). "Investigation of mainstream smoke aerosol of the argileh water pipe". *Food and Chemical Toxicology*.

⁴ Wakeham, H (1972). "Recent Trends in Tobacco and Tobacco Smoke Research". *The Chemistry of Tobacco and Tobacco Smoke*. Boston, MA: Springer.

⁵ Cooperation Centre for Scientific Research Relative to Tobacco. A Preliminary Comparison of flavoured waterpipe tobacco aerosol with cigarette smoke. P Wilkinson, Oct 2019

⁶ At ESCA we estimate that in France illicit trade in shisha tobacco is over 90%.

⁷ Total Excise paid for the most popular shisha brands in the respective market: Spain 22 euro per kg, Germany 27 euro per kg and France 159 euro per kg.

⁸ https://www.lokalkompass.de/mar/c-blaulicht/zoll-hebt-in-nrw-produktionsstaetten-zur-illegalen-herstellung-von-wasserpfeifentabak-aus_a1480883

⁹ [EU anti-fraud official: Tobacco smuggling is 'major source' of organised crime](#), Feb 7, 2017

¹⁰ [Bulk tobacco smuggling increases, worrying OLAF and Commission](#), Aug 29, 2017

¹¹ [Do you know what you're smoking?](#) BBC News, June 3, 2018

High excise rates on shisha have not delivered increased tax revenues or protected public health. In markets where excise rates for waterpipe tobacco are high, such as France, illegally imported and counterfeit waterpipe tobacco (shisha) is widely available and consumption continues to grow in an uncontrolled and unregulated manner.

While reliable studies on the exact size of the shisha economy in Europe do not exist, we believe it is important to consider the following:

1. It generates 200 million¹² euro for European governments (and as stated above, we believe this represents only 1/3¹³ of what European governments should be collecting from the sector)
2. We estimate that there are 11,000¹⁴ shisha serving hospitality venues (all small and microbusinesses) in the Union, concentrated largely in countries with large Turkish, Arabic and North African populations like Germany, France and Spain. Notably, for the majority of these venues, shisha sales account for the majority of revenue.
3. We estimate that 13,550 businesses are engaged in the wholesale and retail sale of shisha products and accessories.
4. Shisha and shisha related businesses employ over 60,000¹⁵ people across Member States of the European Union.
5. We estimate that the majority of tobacco and flavour additives used in legal shisha products sold in the EU are sourced in Europe, principally Germany and France.
6. Legal shisha finished goods are also produced in Germany, Spain and Poland.

In short there is an important shisha value chain in the EU which requires further quantification and study.

At ESCA we believe that the most effective way to maximise revenues and regain regulatory control over this sector is to:

1. **Set a reasonable minimum specific excise rate** that allows for reputable manufacturers of legally manufactured and compliant products to operate. For example, the excise rates structure (high specific and low ad valorem plus reasonable minimum excise) in Germany should serve as a benchmark across all markets as an ideal model to eliminate high levels of illegal product and cross border trade, assuming it is supported by effective enforcement efforts. For example, the equivalent of 1 kg of the most popular brand in France will cost a consumer 250 euro while 1 kg of a similar product will cost 49 euro in Spain.
2. **Introduce a separate tax category for shisha tobacco** to take into account the low level of tobacco content, the unique cultural characteristics and occasional usage.

¹² Study on Council Directive 2011/64/EU on the structure and rates of excise duty applied to manufactured tobacco, Final Report Volume 1, May 2017. Page 105, Table 15.

¹³ Report from the commission to the council on Directive 2011/64/EU on the structure and rates of excise duty applied to manufactured tobacco, 12/1/2018, COM (2018) 17 final

¹⁴ ESCA Internal estimates = Lounges 10,250, Restaurant, Bar, Nightclub 750, General Retailers 12,900, Dedicated Retailers 650.

¹⁵ Employed in over 25,000 legally operating shisha related businesses including factories, lounges, bars, nightclubs, restaurants, retailers, delivery, warehousing and accessories. ESCA Internal estimates.

3. Increase enforcement and education action for shisha retailers and venues to **ensure that staff are aware of the existing minimum age laws** and legal obligations for tobacco sale and usage. ESCA would be pleased to support law enforcement authorities in this regard. Indeed, ESCA member Al Fakher is already doing so. **Cooperate with regulators and law enforcement agencies in the fight against illicit trade in the European Union.** We have an extensive network of retailers and wholesalers which we are willing to approach for help in combatting illicit trade. We remain willing to support regulators and the law enforcement community into the future.

Our objective with this submission for the inception impact assessment is to introduce the category in broad terms and provide pointers for the impact assessment process which we look forward to elaborating through the process. Our concern is that shisha has traditionally been a poorly understood category by regulators largely because it had not had any representation in the policy making processes. This has led to its regulation and taxation alongside other categories with which it has little similarity. ESCA aims to correct this issue and we look forward to elaborating further throughout the consultation process in 2021.

In summary, the key points that we believe should be taken account of for the impact assessment:

1. Shisha is very different from other tobacco and vaping products. Its use is characteristically (and uniquely) social, occasional (infrequent), cumbersome and time consuming. It is not a quick fix nicotine hit but a cultural and social experience suitable for adults only. It has cultural roots in the Middle East, India and North Africa and therefore is more prevalent in European countries with higher concentrations of diaspora from those regions.
2. It is by definition a flavoured product with a comparatively low level of tobacco in a mixture which is heated rather than burned to produce a vapour that is 60% water.
3. It supports a large and diverse value chain in Europe of manufacturers, flavour suppliers, wholesalers, retailers and many thousands of shisha serving hospitality venues.
4. High tax rates and high tax differentials between countries, coupled with low levels of enforcement prioritisation have resulted in alarmingly high levels of tax avoidance thus posing an existential threat to the legal, duty paid sector. It is the only tobacco product where illicit operators have gained a higher market share in Europe than legal businesses. This jeopardises not only legitimate businesses but also consumers and of course, government revenues.

We believe that a mixture of tax reform that takes account of the nature and characteristics of shisha and its consumption patterns coupled with more enforcement attention and industry cooperation will provide the right mix of policy tools to improve the situation.

Yours faithfully,

The Members and Partners of the European Shisha Community Alliance (ESCA)

Manufacturers

Al Fakher Tobacco Factory, Poland
Social Smoke, USA
Afzal Shisha, UK
Hookah Tobacco Factory SL, Spain

Distributors

Tobaccoland, Spain
Caesars, Denmark

Lounges

Chez Bakkali, Spain
Cachimba Shisha Club Lounge, Spain
Atisha Premium Bar, Germany
Café Nani's, Denmark
Medusa Lounge, Spain
La Kasbah, Spain
Shacri, Spain
Asociación de Profesionales y Especialistas en Cachimbas (Partner association), Spain

Services, Suppliers, Retailers, Accessories and Raw Materials

Global Tobacco Flavours BV, Netherlands
MundoCachimba, Spain
Chichamaps, Switzerland
F. Technologies, Italy
Tara bv 2017, Spain
Shaman Coal, UK
Hazy Bowls, USA
@sphinx.hookah, Spain
Goussous Chemicals, Jordan
Mr. Shisha, Spain
Tiger, Croatia
1001 Cachimbas, Spain
Shisha Australia, Australia
Izama Pty Ltd, Australia
Synergy Tobacco, Spain